

## Nutrition Services WIC

10A NCAC 43D .0202, .0706-10 – Authorized WIC Vendors

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**Impact Summary:** State government: Yes  
Local government: No  
Federal government: Maybe  
Substantial impact: Yes

**Authority:** G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;

### Fiscal Impact Summary

The agency is proposing to: add a definition of “SNAP-eligible food sales” to rule .0202, change the current .0706 Authorized WIC Vendor rule, and divide .0706 into five separate rules to improve readability (see proposed changes in Appendix 1). The funding level for the Women, Infants and Children (WIC) program would not be changed as a result of adopting the proposed permanent rule amendments. The level of funding that comes from federal sources to the State would not be altered by these rules, although the level of unused funds the State returns to the federal government each year might decrease. The funds passed from the State to the local governments for administering the WIC Program would not change.

The Department anticipates a small net effect on the private sector as a result of adopting the proposed amendments. On one hand, some vendor applicants might not be approved and stand to lose business, on average \$113,000 per year, from the stricter application requirements. On the other hand, other vendors might see an increase in WIC reimbursements as program participants shift their business from one store to another. There is some uncertainty related to the fate of three predominantly WIC vendors (vendors, also known as PWVs, with WIC sales more than 50% of annual food sales). They may either transition to being regular WIC vendors and receive a higher reimbursement rate than they currently do (very roughly estimated at about \$585,000 for all affected vendors), or go out of business and stand to lose a combined total of \$315,000 in sales of both WIC and non-WIC items. If the PWVs do go out of business, other regular vendors, however, would see an increase in the demand for their WIC supplemental foods.

As a result of the rule changes, the State would experience some staff time savings, estimated at about \$8,000, from not having to monitor or perform food pricing and redemption analysis for PWVs and a cost if the overall reimbursement level goes up (see above). The State might gain a further benefit from reduction in fraud and abuse in the program, although this amount is difficult to estimate given lack of state-centric data.

Moreover, the State would also avoid penalizing actions that the federal government might take if the proposed rule changes are not adopted, and these actions are twofold:

1. If a State agency fails to comply with the federal regulation regarding patterns for violative incidences, the U.S. Department of Agriculture could put the State on a corrective action plan. Should a corrective action plan be put in place, administrative time will be expended addressing the corrective action and ensuring NC is brought into compliance. The Department cannot estimate the exact savings from preventing a corrective action plan, but expects this it would be less than \$8,000 (based on the time spent on corrective actions taken in the wake of a State audit and on the fact that the day-to-day work the agency performs due to federal requirements related to managing PWVs is estimated at about \$8,000 in terms of agency staff time).
2. The USDA may refuse to approve the NC WIC State Plan for the next fiscal year until North Carolina fully complies with federal regulations. Refusal to approve the State Plan, though an option, would be the most severe repercussion and last resort the USDA would employ to ensure that North Carolina adopts the required federal regulations.

Given all the uncertainties related to the impact on the private sector, to the savings from reduction of fraud and abuse, and to the possibility of losing Federal funds as a result of inaction, it is unclear what the overall costs and benefits would be. Although, given that costs to one affected party are actually benefits to another, it is possible for this overall economic impact (costs plus benefits) to be substantial. Table 1 below provides an overview of the possible impact.

Table 1 – Summary of Possible Annual Impact, by Scenario

	<b>Scenario 1</b>	<b>Scenario 2</b>
<b>Costs</b>		
State Gov't*	\$230,000	\$190,000
PWVs	unquantified costs to convert to regular vendor	\$315,000
Regular WIC	unquantified costs due to more stringent requirements	unquantified costs due to more stringent requirements
Public	-	Small inconvenience to public from changing stores
<b>TOTAL</b>	<b>\$230,000</b>	<b>\$505,000</b>
<b>Benefits</b>		
State Gov't	\$8,000 unquantified benefits from complying with federal requirements**	\$8,000 unquantified benefits from complying with federal requirements**
PWVs	\$585,000	-
Regular WIC	-	\$190,000
Public	unquantified benefits from decrease in fraud and abuse	unquantified benefits from decrease in fraud and abuse
<b>TOTAL</b>	<b>\$593,000</b>	<b>\$198,000</b>

\* These costs would actually be incurred by the federal government since the state would fund these costs with current surpluses which would otherwise be returned to the federal government.

\*\* Although the agency cannot estimate the saving from avoiding a corrective action plan, it does expect it to be less than \$8,000.

## **Proposed Rule Changes and Their Impact**

The proposed rule changes perform the following actions:

1. Include a definition of “SNAP-eligible food sales” in rule .0202

Defining SNAP eligible food sales is just a clarification and would have no economic impact. SNAP foods are already defined at the federal level as foods that can be purchased with Supplemental Nutrition Assistance Program benefits.

2. Repeal current language/Incorporate Federal regulations by reference

- A. Common ownership provision – repeal as not federally required.
- B. Review of Sales Figures Six Months – repeal as not federally required.
- C. Vendor Purchases – incorporate federal regulations by reference with subsequent amendments.

Repealing language and incorporating federal regulations by reference will have no fiscal impact.

3. Eliminate Predominantly WIC Vendors (vendor type)

We are proposing to eliminate the Predominantly WIC Vendor (PWV) type in North Carolina. PWVs are WIC vendors who derive more than 50% of their annual food sales revenue from the WIC Program. NC implemented Administrative Procedure Rules in 2006 to meet Federal Regulations regarding PWVs. At that time, NC made the decision to continue allowing PWVs to obtain WIC Vendor authorization. The NC WIC Program implemented significant changes in food reimbursement and reporting requirements mandated by Federal Regulations. Federal regulations limited food reimbursement level to PWVs to the statewide average price for any food instrument type redeemed. PWVs are typically very small stores and once the reimbursement restrictions were applied the vast majority did not continue to participate in the WIC Program. The limits on what WIC can reimburse a PWV are often below their cost to purchase the foods.

In 2006, there were 68 PWVs participating in WIC. These vendors were very active in voicing their concern that the federal requirements were too restrictive. Only one of the original 68 PWVs is currently participating in WIC today. Of the over 1,800 WIC vendors in NC there are currently only 3 PWVs. Due to the WIC redemption threshold that separates regular WIC vendors from PWVs, which is 50% of all food sales revenue, some vendors transfer back and forth from regular vendor status to PWV status. As their WIC redemption fluctuates at around 50%, they do not stay in PWV status for a prolonged period of time.

The Nutrition Services Branch is recommending elimination of PWVs in North Carolina for several reasons:

- PWV enrollment is a state option for WIC programs. Federal regulations do not require that States authorize them. As a result, only one other state in the Southeast region actively authorizes this type of vendor.
- There are many administrative challenges in managing 3 PWVs each year, which include:
  - State and local agency staff is required to supervise and separately train the PWVs, which includes monitoring and documenting the provision of allowable and prohibited incentive items by PWVs.
  - A number of state agency staff are involved in food pricing and redemption analysis required by federal regulations to:
    - Determine appropriate reimbursement rate for food instrument types and publish Maximum Allowable Reimbursement (MAR) rates (published each month on Nutrition Services web page),
    - Perform Monthly Cost Neutrality Analysis
    - Analyze Quarterly MAR (Done for State Auditor), and
    - Perform Annual Cost Containment Analysis for the USDA.
 The above items are used to document that the federal regulations for cost containment are met for PWVs.
- While NC meets the federal requirements, the State Auditor’s Office has issued a finding related to PWVs and to the controls the Department has in place for monitoring activities associated with these few vendors. The finding, 10-SA-7, is as follows: “Weaknesses in the Monitoring of the Calculation of the WIC Maximum Allowable Reimbursement Rates.” The impact has been the addition of special reports and additional analysis for a very small number of stores which represent less than 3% of all North Carolina vendors.

All together, State staff spends 144 hours annually, equivalent to over \$8,000 in salary plus benefits, to manage this small group of vendors. Elimination of PWVs would represent a cost savings to the State as the opportunity cost of staff time required for managing these vendors would be greatly reduced. Facts previously presented demonstrate that the presence of PWVs, of which there are only three currently in the State, does not provide significant benefit to the community that can justify the excessive administrative overhead required to monitor this vendor type. Moreover, by eliminating the PWVs, the potential fraud and abuse that has been identified in relation to this type of vendors might be diminished in the future.

It has also been determined that elimination of PWVs would not compromise WIC participant access. None of the three PWVs currently authorized are in an area where there is limited participant access to other WIC vendors. Without the PWVs, WIC participants would still be able to shop for their WIC-approved items at other vendors in their area.

The proposed rule changes would clearly affect the three vendors currently classified as PWVs, and there are two likely scenarios:

A. Scenario 1

Vendors can choose to market their businesses differently so that they do not fall into the PWV classification. For example, if they sell enough other food items which cannot be purchased with a WIC food instrument, their percentage of WIC sales will decrease causing them to be reclassified as a regular vendor. It is actually in the vendor's best interest to be a regular vendor because they would receive a higher reimbursement rate per item. Table 2 below shows the March 2012 reimbursement rates by peer group for several food instrument types:<sup>1</sup>

Table 2 – Reimbursement Rates for Select Food Type Codes for Regular Vendors and PWVs

Code	Peer 1	Peer 2	Peer 3	Peer 4	MAR	Food package Items
000005	97.76	93.04	78.64	51.44	35.18	2 boxes infant cereal, 128 oz infant fruits & vegetables, 40 oz. infant meats
000007	65.86	62.63	52.78	34.36	21.47	1 box infant cereal, 88 oz infant fruits & vegetables, 27.5 oz. infant meats
000008	51.74	51.99	50.56	37.37	26.09	2 gal Milk, 1 doz. Eggs, 36 oz cereal, 64 oz juice, 16 oz bread or Tortillas or 14 to 16 oz Rice, 16oz Bag or Four 15 to 16 oz cans Beans OR 16 to 18 oz Peanut Butter
001960	53.41	53.62	52.92	40.30	28.14	4 half-gallons Lactose Reduced Milk, 1 doz eggs, 36 oz cereal, 11.5 to 12 oz frozen or 48 oz juice, 16oz or 4 cans 15-16 oz beans or 16-18 oz peanut butter
003921	132.96	131.20	132.64	87.68	82.55	Sixteen (16) 13 oz cans Enfamil PREMIUM Infant concentrate
003937	110.05	109.85	111.30	79.95	78.47	Five (5) 12.5 oz cans Powdered Enfamil PREMIUM Infant

Regular vendors are reimbursed based on the maximum allowable prices (MAPs) calculated for peer groups 1-4; PWVs are reimbursed the maximum allowable reimbursement (MAR) rate (shown in the shaded column in Table 2), which is computed using the statewide average price per food instrument type. As illustrated in the table above, PWVs are reimbursed the least amount of all peer groups for each food type. As a result, PWV classification, whether the vendor has 51% or 99% WIC redemption may not be as lucrative for the vendor as being classified under one of the standard peer groups.

Furthermore, regular vendors have higher total annual redemptions than PWVs. Despite selling a lower volume of WIC items, regular vendors tend to have a higher average annual redemption of approximately \$113,000, versus the \$74,000 for PWVs, as shown in the Table 3 below. This data suggest that the total annual sales (WIC and non-WIC) of regular vendors are at least \$226,000, on average. This difference is in part due to the fact that larger stores and chain stores generally fall into the regular vendor category and skew the average as they are

<sup>1</sup> More information pertaining to peer group definitions can be obtained in the NC WIC Vendor Manual at <http://www.nutritionnc.com/wic/pdf/20112012VendorManual.pdf>

more apt to diversify their stock and stay below the 50% WIC redemption threshold.

Table 3- Average Annual Redemption for Regular Vendors versus PWVs

<b>Vendor Status</b>	<b>Average Annual Reimbursement FFY 2011</b>
Predominantly WIC (PWV)	\$74,359.46
Regular vendor (Peer Groups 1-4)	\$113,128.25

As data in both tables demonstrate, it may be better financially for PWVs to be classified in one of the standard peer groups because it could increase total annual redemption. Also, diversifying the products and selling other items needed in the community might increase PWVs' total revenue (WIC, SNAP, cash and credit/debit sales).

The Department does not have the necessary data to compute more accurately what the benefit to PWVs could be under this scenario. However, a more rudimentary calculation shows that, if PWVs succeed in becoming regular vendors, they could double their overall sales. Given the definitions of the peer groups, it is likely that the current PWVs would fall in groups 1-3, which are reimbursed about 90-110% more per item on average (see Table 2 above). Assuming their WIC sales volume would continue to be similar to FFY 2011, each PWV could be reimbursed annually by the WIC program roughly \$150,000 (or about \$450,000 total for all three). Assuming the three PWVs would succeed in boosting non-WIC sales in order to be labeled as a regular vendor (WIC sales would be only 50% of total), and based on the PWV's average reimbursement of about 71% (as noted when the vendors were last inspected), then these vendors could see gains of about \$195,000 each (or about \$585,000 total). Again, these numbers are rough and based on a set of assumptions, including that the PWVs would succeed in diversifying their business. Also, this calculation does not account for the losses the business would incur from diversifying their stock or the fact that it would take at least three months for the vendor to transition from PWV to regular vendor status and they might experience some losses during that period. Additionally, it should be noted that by selling other non-WIC items, these vendors might be taking business away from other stores.

In this scenario, the State WIC program may end up increasing their payments to vendors since the assumption is that the volume of WIC sales would not really change, but the reimbursement rates to the current PWVs would increase. That increase might be around \$230,000 (about \$450,000 reimbursement at higher rate less current reimbursement to PWVs of about \$74,000 each). The Department expects to be able to cover this possible increase with extra direct program funds it currently receives from the federal government. Currently, these funds are returned to the federal government if unused by the end of the federal fiscal year. Therefore, the federal government might see an increase in the amount of funds

spent on the WIC program in NC. The Department projects, however, that the possible increase in reimbursements to WIC vendors would be offset by savings the program will experience as a result of the decrease in funds spent for fraud and abuse.

B. Scenario 2

The other possibility is that the current PWVs are not competitive enough, or for some other reason cannot obtain revenue from non-WIC sales that would propel them into the regular vendor category causing them to lose reimbursements of approximately \$74,000, on average each (or \$220,000 total), based on the average annual redemption for a PWV in FFY2011 (see Table 2). Given that WIC sales represent about 71% of these vendors' total sales, it is possible that they would lay off employees, go out of business, and incur even higher losses of about \$105,000 each (or a total average of \$315,000 for all three PWVs).

Assuming that the demand for WIC food items remains constant going forward and customers are not too inconvenienced by shopping at other WIC authorized vendors, other regular vendors would see a tantamount increase in their WIC sales volume. From the State's perspective, the WIC program would end up paying more for the same amount of supplemental foods since the peer group 1-4 vendors are reimbursed at rates between 2% and 207% higher (86%, on average), depending on peer group and item type, than current PWVs (see Table 2). As a result the WIC program might see an increase in reimbursements of roughly \$190,000 (or \$220,000 times 86%). Again, the Department expects to cover this possible increase in program costs with additional funds currently available for the program.

Regardless of the outcome, in terms of sales volume of WIC supplemental foods, the Department has determined that there will be little impact on the private sector, on the net, from this rule change as the number of participants redeeming food instruments within local communities will remain the same. The level of total WIC reimbursements might, however, increase due to higher reimbursement rates. The same overall amount, however, would remain available through the State's food budget as the program has been running a surplus and the Department expects to be able to cover the increase in reimbursements while maintaining the same level of direct program funding.

In summary, elimination of PWVs would significantly decrease the State's administrative burden and risk associated with the complex calculations, processes, reviews and reports required to manage this vendor type. Additionally, the presence of this vendor type does not provide significant benefit to the community to justify the administrative opportunity costs of consistently monitoring these vendors.

4. Strengthen Requirements

The following changes are proposed in order to fight fraud and abuse in the program and ensure compliance with federal requirements:

#### A. Receipts/Invoices

Language is being amended to more clearly identify the documentation needed for receipts/invoices to be acceptable. A one year penalty was added if a vendor fails to purchase the specified WIC foods from an approved supplier. The requirement to purchase foods from an approved supplier was previously in the rule.

#### B. Vendor Applications

In order to increase accountability and program integrity, language was added that prevents vendor applicants from having an application approved if their previous vendor agreement has been terminated within the previous 12 months for submitting false, erroneous or misleading information. The cost associated with lack of WIC authorization varies based on the peer group that the vendor falls in (see average peer group 1-4 reimbursement level in Table 3); however, it would be substantially less than the cost incurred by the state and federal government i.e., taxpayers, for authorizing a fraudulent vendor. The Department has no information regarding the frequency of this type of incidents.

#### C. Vendor Claims

Vendor applicants will not be authorized if a claim is outstanding; and vendors who do not repay outstanding claims within 30 days risk termination of their WIC Vendor Agreement. As a result, vendors risk losing a large amount of revenue from WIC reimbursements and other sales as WIC participants take their business to other authorized vendors that meet all their shopping needs. This forces the vendor applicant to ensure payment of their outstanding claim so that they can accept WIC. More importantly, this will improve program integrity and recoupment of funds for the WIC Program which can be utilized to provide WIC-approved foods to more participants. WIC is not an entitlement program. When monies are not recouped from outstanding claims, fewer families can be served. Conversely, not authorizing a vendor with a previous history of fraudulent activity that has not been resolved will be a cost savings to the Program because prevention of authorization will prevent additional fraudulent activity and potentially save millions of dollars (see explanation provided at the end of this section).

#### D. Minimum Inventory

Language was added that excludes dried peas and beans from being considered as vegetables for the sake of minimum inventory. This change will clarify current policy which lists vegetables as a minimum inventory item, but does not ensure that vendors keep vegetables, as defined and required by program policy, in stock.

#### E. SNAP (Food Stamps) Eligible Food Sales Records

A provision was added to allow additional sources of food sales records. Giving vendors this flexibility alleviates some administrative burden from the vendors, as vendors have previously requested this option; currently, Sales and Use Tax

Forms must be obtained from their accountants or the Department of Revenue. Staff consulted with the Department of Revenue and was informed that the Sales and Tax Use Tax Form could not definitively give us SNAP eligible food sales because of the way the form is structured. Furthermore, this change is in compliance with USDA guidance. Allowing additional documentation provides the vendors with the opportunity to submit more accurate information.

#### F. Incorporation by Reference

In several sections, e.g. b(3)(A), the revised version of the rule refers to “*incorporation by reference with all subsequent amendments and editions.*” We do not know if a change to the federal regulations will occur, but there could be a fiscal impact in the future, which we are currently unable to quantify, if regulations are amended at the federal level.

If successful in combating fraud and abuse, the impact of the above changes could be significant. In the July 2003 *Questions and Answers Regarding the WIC Food Delivery Systems Final Rule* document published by the Food and Nutrition Service section of the USDA, it states: “*Studies have shown that each year vendor violations, whether intentional or not, result in the loss of tens of millions of dollars of program funds.*” In the years since this document was published, this vendor violations estimate has increased significantly. The Department does not have more recent state-specific information related to possible savings from reduced violations. As previously mentioned, the WIC program is not an entitlement program and every dollar provided to a vendor for fraudulent activity limits the number of WIC participants that can benefit from the program. Millions of dollars saved nationally from averted vendor violations can provide WIC approved foods to a tremendous number of women, infants and children who are nutritionally at risk. According to reports published by the USDA available at <http://www.fns.usda.gov/wic/aboutwic/howwichelps.htm>, every dollar spent on prenatal WIC participation for low-income Medicaid women in five states resulted in:

- longer pregnancies;
- fewer premature births;
- lower incidence of moderately low and very low birth weight infants;
- fewer infant deaths;
- a greater likelihood of receiving prenatal care; and
- savings in health care costs from \$1.77 to \$3.13 within the first 60 days after birth.

Prevention of WIC authorization after the provision of false information or non-payment of a claim can increase savings to the State from averted fraudulent activity and decreased health care costs. It may also result in an increase in the number of WIC participants provided with nutritious foods in North Carolina. This will indirectly result in lower nutritional risk status and better health outcomes for participants.

Currently there is no statewide information available to determine the amount of possible violations. If a vendor is in violation, however, they would risk losing approximately \$113,000 in

WIC redemption for 12 months (see Table 3), and possibly more if consumers decide to switch to another store that carries WIC eligible items.

Administrative and food budgets will not change for local or state governments as the result of these revisions as the demand for WIC items is assumed to stay constant. The fiscal impact may be felt by vendor applicants if they have previously provided false information on an application or if they owe an outstanding claim; however, this impact is offset by the tremendous cost savings to State/Federal governments for not adding a fraudulent vendor to the Program.

#### 5. Adopt Patterns to Disqualify for State-established Violations

Federal regulations now require patterns to disqualify vendors for State-established violations. This amendment to the rule is proposed to address this requirement, which is needed to ensure compliance with federal regulations. While more monitoring visits to vendors by staff will likely be necessary to establish a pattern, we anticipate that the staff time saved by eliminating PWVs will offset the additional time required to establish a pattern for State violations. It should also be noted that the USDA may place the State on a corrective action plan if we do not comply with this regulation. This was mentioned during the review of this fiscal year's State Plan and the Management Evaluation conducted this past May. The increased staff time spent at the local agency level does not compare to the detrimental impact of the State being placed on a corrective action plan due to non-compliance.

The local agencies as well as the State receive an administrative grant for the program that is based on a flat rate per participant served (based on average participation over a designated period of time). If the proposed changes are adopted, the overall grant will not change and additional staff will not need to be hired, therefore there will be no fiscal impact.

The impact on the State if the permanent rule changes are not adopted is twofold:

1. If a State agency fails to comply with the federal regulation regarding patterns for violative incidences, the U.S. Department of Agriculture could put the State on a corrective action plan. Should a corrective action plan be put in place, administrative time will be expended addressing the corrective action and ensuring NC is brought into compliance.
2. The USDA may refuse to approve the NC WIC State Plan for the next fiscal year and thereafter until North Carolina fully complies with federal regulations.

#### **Uncertainties**

It is difficult to predict what the impact of these proposed changes would be since there are a number of uncertainties and the lack of data increases the difficulty of making assumptions. The biggest uncertainty is related to the outcome for PWVs. There is no information to determine which of the two scenarios described above is more likely. Furthermore, if Scenario 1 comes to pass, it is unclear whether the current PWVs would be able to maintain the same volume of WIC sales, or if they will decrease the volume of WIC sales in order to be below the 50% WIC sales threshold. Also, due to possible changes to the way these vendors would conduct business, the

Department cannot state with certainty what peer group each PWV would eventually fall under. Tables 4 and 5 below show possible WIC reimbursement amounts and total increase in store sales for the PWVs depending on what peer group they might fall into, assuming that the volume of WIC sales is constant from FFY 2011 levels and their WIC sales would be 50% of total sales.

Table 4 – Estimated WIC Reimbursements and Total Sales for PWV Converting to Regular WIC Vendor

	<b>Peer Group 1</b>	<b>Peer Group 2</b>	<b>Peer Group 3</b>	<b>Average</b>
Reimbursement per vendor	\$158,000	\$154,000	\$143,000	\$152,000
<b>Total Reimbursement</b>	<b>\$474,000</b>	<b>\$462,000</b>	<b>\$429,000</b>	<b>\$455,000</b>

Table 5 – Estimated Increase in Total Sales for PWV Converting to Regular WIC Vendor

	<b>Peer Group 1</b>	<b>Peer Group 2</b>	<b>Peer Group 3</b>	<b>Average</b>
Store Sales per vendor	\$211,000	\$203,000	\$181,000	\$198,000
<b>Total Store Sales</b>	<b>\$633,000</b>	<b>\$609,000</b>	<b>\$543,000</b>	<b>\$595,000</b>

Another uncertainty relates to the potential impact of the stricter requirements on WIC vendors. There is not enough information to predict how many vendors might submit false information and then try to reapply in the following 12 months. Furthermore, given the wide range of WIC reimbursements stores receive, it is difficult for the Department to estimate the loss vendors would incur from having to wait for a year to reapply under the proposed requirement.

Uncertainty is also associated with the new vendor claims requirement since it is hard to predict how many vendors might have outstanding claims when they try to re-enroll and what the amount of those claims might be. Current claims range from hundreds to thousands of dollars.

A big unknown is the amount of funds that would be saved from establishing these fraud and abuse preventive measures. While there are studies that suggest the savings would be in the millions at the national level, there is no state-centric information. The other unknown is what the overall benefits of these proposed changes would be for the population that is served by the WIC program.

Based on all these uncertainties the Department can only assume that the aggregate impact (costs plus benefits) of the proposed changes would be substantial (over \$500,000 in a 12-month period).

### **Alternatives**

The Department considered two alternatives to the proposed rule changes, but dismissed them based on the concerns discussed below:

1) Maintaining PWVs

The State WIC Program could continue to authorize PWVs as a vendor type; however, this alternative is not considered feasible due to the excessive administrative overhead required to oversee the small number of stores currently under this

classification. The high cost associated with the continued management of this vendor type cannot be justified when compared to the administrative burden shouldered by the State. Furthermore, by choosing this alternative the State would forego any benefits related to potentially preventing fraud and abuse.

- 2) Excluding stricter vendor application and claims requirements from proposed changes  
The exclusion of stricter requirements for vendor re-authorization is possible, but would be detrimental to the business integrity of the Program. Currently, vendors must pay outstanding claims if they wish to maintain vendor authorization and failure to do so may result in disqualification. Including a requirement to pay a claim in order to avoid termination of the vendor agreement or, in the case of a vendor applicant, to be granted vendor authorization, will help the State to collect money which can be put back into the Program to assist others that may be eligible to receive Program benefits. Inclusion of a clause that prevents vendor applicants who have had a previous Vendor Agreement terminated within the past year for submitting false, erroneous or misleading information will keep fraudulent vendors off the Program. Together, both new requirements will preclude further fraud and abuse which will inevitably also result in tremendous cost savings to the State. Without the presence of these new stricter provisions in the rules, the State WIC Program will not be able to hold WIC vendors accountable for these fraudulent activities as there will not be a rule in place to enforce these much-needed requirements.

## Appendix 1

10A NCAC 43D .0202 is proposed for amendment as follows:

### 10A NCAC 43D .0202 DEFINITIONS

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is an appeal in accordance with Section .0800 of this Subchapter through which a local WIC agency, potential local WIC agency, authorized WIC vendor or potential authorized WIC vendor may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food retailer or free-standing pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has 20 or more stores owned or operated by the business entity.
- (5) A "fair hearing" is the informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to requesting a contested case hearing in accordance with G.S. 150B.
- (6) "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.
- (7) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.
- (8) The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.
- (9) A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.
- (10) A "predominantly WIC vendor" is an 'above-50-percent vendor' as defined in 7 C.F.R. 246.2.

- (11) "Redemption" is the process by which a vendor deposits for payment a food instrument or cash-value voucher ~~for payment~~ transacted at that vendor and the state agency (or its financial agent) makes payment to the vendor for the food instrument or cash-value voucher.
- (12) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.
- (13) "SNAP-eligible food sales" means "food sales" as defined in 7 C.F.R. 246.2, which are those foods that can be purchased with Supplemental Nutrition Assistance Program ("SNAP") benefits.
- (13) The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.
- (14) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- (15) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 10A NCAC 43D .0501.
- (16) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (17) "Transaction" is the process by which a WIC customer tenders a food instrument or a cash-value voucher to a vendor in exchange for authorized supplemental foods.
- (18) "Vendor applicant" is a store that has submitted an application to become an authorized WIC vendor but is not yet authorized as a WIC vendor. ~~authorized.~~
- (19) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (20) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has 20 or more stores authorized as WIC vendors under the Agreement.
- (21) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument or a cash-value voucher to a vendor in exchange for WIC supplemental food.
- (22) "WIC program" means the Special Supplemental Nutrition Program for Women, Infants, and Children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 5601 Six Forks Road, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

*History Note:* Authority G.S. 130A-361; 42 U.S.C. 1786; 7 C.F.R. 246;  
 Eff. July 1, 1981;  
 Amended Eff. December 6, 1991; November 1, 1990; July 1, 1989;  
 Temporary Amendment Eff. May 17, 2000;

*Amended Eff. April 1, 2001;*

*Temporary Amendment Eff. July 1, 2002;*

*Amended Eff. August 1, 2004;*

*Temporary Amendment Eff. July 1, 2006;*

*Amended Eff. January 1, 2013; Amended Eff. October 1, 2009; April 1, 2007.*

10A NCAC 43D.0706 is proposed for amendment as follows:

**10A NCAC 43D.0706 ~~AUTHORIZED WIC VENDORS~~ VENDOR PEER GROUPS**

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

- (1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, ~~predominantly WIC vendors~~, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until ~~six months of~~ annual WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

Peer Group I - - zero to two cash registers;

Peer Group II - - three to five cash registers; and

Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in a peer group in accordance with the dollar thresholds of ~~Subparagraph (a)(2)~~ Item (2) of this Rule.

- (2) Authorized vendors for which annual WIC supplemental food sales ~~is~~ are available, excluding chain stores, stores under a WIC corporate agreement, military commissaries, ~~predominantly WIC vendors~~, and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in ~~Subparagraph (a)(8)~~ Item (9) of this ~~Rule.~~ Rule:

Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;

Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;

Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and

Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the ~~store;~~ store.

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, ~~predominantly WIC vendors,~~ and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), and military commissaries, commissaries; and ~~predominantly WIC vendors;~~ and

Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate ~~agreement;~~ agreement.

- (4) Annual WIC supplemental food sales is the dollar amount ~~in sales of WIC supplemental foods at the store~~ an authorized vendor redeems in WIC food instruments and cash-value vouchers within a 12-month period.

- (5) In determining a vendor's peer group designation based on annual WIC supplemental food sales under ~~Subparagraph (a)(2)~~ Item (2) of this Rule, the state agency shall look at the most recent 12-month period of ~~sales~~ redemption data.

- (6) ~~All stores held under common ownership shall be placed in the highest peer group among those commonly held. Common ownership is ownership of 30 percent or more in each of the stores commonly held.~~

- ~~(7)(6)~~ The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's ~~agreement~~ Agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (7) If the state agency determines that a vendor applicant is expected to be a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor application shall be denied. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(E) for determining whether a vendor applicant is expected to be a predominantly WIC vendor.

- (8) If at any time during a vendor's authorization the state agency determines that the vendor has become a predominantly WIC vendor as defined in Rule .0202 of this Subchapter, the vendor's WIC Vendor Agreement shall be terminated. The store must wait 90 days to reapply for vendor authorization. The state agency shall apply the methodology set forth in 7 CFR 246.12(g)(4)(i)(F) for determining whether an authorized vendor has become a predominantly WIC vendor.

- ~~(8)(9)~~ A vendor applicant previously authorized in a peer group under ~~Subparagraph (a)(2)~~ Item (2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or

disqualification or withdrawal from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under ~~Subparagraph (a)(2)~~ Item (2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination, disqualification or withdrawal. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with ~~Subparagraph (a)(1)~~ Item (1) of this Rule.

~~(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:~~

- ~~(1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.~~
- ~~(2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.~~
- ~~(3) A vendor applicant shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
  - ~~(A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;~~
  - ~~(B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture and Consumer Services;~~
  - ~~(C) Retail food stores that purchase directly from suppliers described in Part (b)(3)(A) or Part (b)(3)(B) of this Rule; or~~
  - ~~(D) A supplier on another state's list of approved infant formula suppliers as verified by that state's agency.~~~~

~~Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC eligible medical foods. Acceptable receipts include company letterhead or name of wholesaler or manufacturer with date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC eligible medical food purchases.~~

- ~~(4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule. The maximum price for each supplemental food shall be established as follows:~~

- ~~(A) — The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The WIC Price Lists of predominantly WIC vendors shall be excluded from the maximum price determination. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(31) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year. The sample of vendors shall exclude predominantly WIC vendors.~~
- ~~(B) — If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.~~
- ~~(5) — A vendor applicant shall pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(24) of this Rule. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.~~
- ~~(6) — A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.~~
- ~~(7) — An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.~~

- ~~(8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.~~
- ~~(9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.~~
- ~~(10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.~~
- ~~(11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency.~~
- ~~(12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.~~
- ~~(13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.~~
- ~~(14) A vendor applicant shall not be authorized if it is currently disqualified from the Special Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.~~
- ~~(15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:~~
- ~~(A) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period~~

~~during which the disqualification would have run, had a penalty not been paid, is continuing; or~~

- ~~(B) — another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(e1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.~~

~~The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Subparagraph shall apply until the time the SNAP vendor disqualification otherwise would have expired.~~

- ~~(16) — A vendor applicant, excluding free standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.~~

- ~~(17) — A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.~~

~~(c) By signing the WIC Vendor Agreement, the vendor agrees to:~~

- ~~(1) — Process WIC program food instruments and cash value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;~~
- ~~(2) — Accept WIC program food instruments and cash value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;~~
- ~~(3) — Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash value voucher if the WIC customer pays the difference;~~
- ~~(4) — Enter in the "Pay Exactly" box on the food instrument or cash value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;~~
- ~~(5) — Charge no more for supplemental food provided to a WIC customer than to a non WIC customer or no more than the current shelf price, whichever is less;~~

- ~~(6) — Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument. Payment to predominantly WIC vendors for a food instrument shall not exceed the statewide average for that food instrument. This average excludes data from predominantly WIC vendors;~~
- ~~(7) — Accept payment from the state WIC Program only up to the full dollar value of the cash value voucher;~~
- ~~(8) — Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;~~
- ~~(9) — For non contract brand milk based and soy based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;~~
- ~~(10) — For free standing pharmacies, provide only exempt infant formula and WIC eligible medical foods;~~
- ~~(11) — Excluding free standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;~~
- ~~(12) — Accept WIC program food instruments and cash value vouchers only on or between the "Date of Issue" and the "Participant Must Use By" dates;~~
- ~~(13) — Prior to obtaining the signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash value voucher is exchanged for supplemental food;~~
- ~~(14) — Ensure that the food instrument or cash value voucher is signed in the presence of the cashier;~~
- ~~(15) — Refuse to transact any food instrument or cash value voucher that has been altered;~~
- ~~(16) — Not transact food instruments or cash value vouchers in whole or in part for cash, credit, unauthorized foods, or non food items;~~
- ~~(17) — Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;~~

- (18) ~~Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash value voucher to enable the vendor number to be read during the Program editing process;~~
- (19) ~~Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;~~
- (20) ~~Deposit WIC program food instruments and cash value vouchers in the vendor's bank. All North Carolina WIC program food instruments and cash value vouchers must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument or cash value voucher;~~
- (21) ~~Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;~~
- (22) ~~Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local agency;~~
- (23) ~~Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash value vouchers;~~
- (24) ~~Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:~~

<b>Food Item</b>	<b>Type of Inventory</b>	<b>Quantities Required</b>
Milk	Whole fluid: gallon	2 gallons
	— and —	
	Skim/lowfat fluid: gallon	4 gallons
Cheese	1 pound package	2 pounds
Cereals	2 types: whole grain	
	(minimum package size 12 ounce)	6 packages
Eggs	Grade A,	2 dozen
	large, white: one dozen size carton	
Juices	Single strength:	
	48 ounce container	4 containers
	64 ounce container	4 containers
Dried Peas and Beans	one pound package	2 packages

<del>Peanut Butter</del>	<del>16 to 18 ounce container</del>	<del>2 containers</del>
<del>Infant Cereal</del>	<del>8 ounce box</del>	<del>6 boxes</del>
<del>Infant Formula</del>	<del>milk based concentrate;</del>	<del>34 cans</del>
	<del>13 ounce</del>	
	<del>and</del>	
	<del>soy based concentrate;</del>	<del>17 cans</del>
	<del>13 ounce</del>	
	<del>and</del>	
	<del>milk based powder;</del>	<del>10 cans</del>
	<del>12.9 to 14.3 ounce</del>	
	<del>and</del>	
	<del>soy based powder;</del>	<del>5 cans</del>
	<del>12.9 to 14.3 ounce</del>	
	<del>Brands must be the</del>	
	<del>primary contract infant formulas</del>	
<del>Fruits</del>	<del>14 to 16 ounce can: 2 varieties</del>	<del>6 cans</del>
<del>Vegetables</del>	<del>14 to 16 ounce can: 2 varieties</del>	<del>6 cans</del>

~~All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk, soy based or lactose free infant formula in 32 ounce ready to feed or lactose free powder within 48 hours of request by the state or local WIC agency;~~

- ~~(25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;~~
- ~~(26) Permit the purchase of supplemental food without requiring other purchases;~~
- ~~(27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local agency;~~
- ~~(28) Inform and train vendor's cashiers and other staff on WIC Program requirements;~~
- ~~(29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;~~
- ~~(30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowing access to all WIC food instruments and cash value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor~~

- ~~for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (g)(1) of this Rule;~~
- ~~(31) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;~~
- ~~(32) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);~~
- ~~(33) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash value vouchers;~~
- ~~(34) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash value vouchers;~~
- ~~(35) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;~~
- ~~(36) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;~~
- ~~(37) Offer WIC customers the same courtesies as offered to other customers;~~
- ~~(38) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with 42 USC 1786(h)(14). If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. Vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of~~

~~supplemental foods, lottery tickets, or cash gifts. The limitations of this Subparagraph apply only to predominantly WIC vendors;~~

~~(39) — Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor selection criteria of Paragraph (b) of this Rule; and~~

~~(40) — Comply with all the requirements for vendor applicants of Subparagraphs (b)(3), (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(10), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.~~

~~(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:~~

~~(1) — Provide annual vendor training on WIC procedures and rules;~~

~~(2) — Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;~~

~~(3) — Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and~~

~~(4) — Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.~~

~~(e) For a food retailer or free standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.~~

~~(f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.~~

~~(g) Title 7 C.F.R. 246.12(1)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(1)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (1)(1)(iii)(B) through (F) and 246.12(1)(1)(iv), shall be established as follows:~~

~~(1) — claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60 day period. The six or more days do not have to be consecutive days within the 60-~~

~~day period. Failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;~~

- ~~(2) two occurrences of vendor overcharging within a 12 month period;~~
- ~~(3) two occurrences of receiving, transacting or redeeming food instruments or cash value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12 month period;~~
- ~~(4) two occurrences of charging for supplemental food not received by the WIC customer within a 12 month period;~~
- ~~(5) two occurrences of providing credit or non food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers within a 12 month period; or~~
- ~~(6) three occurrences of providing unauthorized food items in exchange for food instruments or cash value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12 month period.~~

~~(h) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule:~~

- ~~(1) When a vendor commits any of the following violations, the state established disqualification period is:
  - ~~(A) 90 days for each occurrence of failure to properly transact a WIC food instrument or cash value voucher by not completing the date or purchase price on the WIC food instrument or cash value voucher before obtaining the signature, by not obtaining the signature in the presence of the cashier, or by accepting a WIC food instrument or cash value voucher prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument or cash value voucher;~~
  - ~~(B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument or cash value voucher;~~
  - ~~(C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and~~
  - ~~(D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule.~~~~
- ~~(2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:~~

- (A) ~~2.5 points for:~~
- (i) ~~stocking WIC supplemental foods outside of the manufacturer's expiration date;~~
  - ~~or~~
  - (ii) ~~unauthorized use of the "WIC" acronym or the WIC logo.~~

- (B) ~~5 points for:~~
- (i) ~~failure to attend annual vendor training;~~
  - (ii) ~~failure to stock minimum inventory;~~
  - (iii) ~~failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or~~
  - (iv) ~~failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services.~~

- (C) ~~7.5 points for:~~
- (i) ~~discrimination on the basis of WIC participation (separate WIC lines, denying trading stamp); or~~
  - (ii) ~~contacting a WIC customer in an attempt to recoup funds for a food instrument or a cash value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or a cash value voucher.~~

- (D) ~~15 points for:~~
- (i) ~~failure to allow monitoring of a store by WIC staff when required;~~
  - (ii) ~~failure to provide WIC food instruments or cash value vouchers for review when requested;~~
  - (iii) ~~failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for failure or inability to provide records for an inventory audit;~~
  - (iv) ~~nonpayment of a claim assessed by the state agency;~~
  - (v) ~~providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash value vouchers or monitoring forms), except as provided in Subparagraph (c)(30) and Subparagraph (g)(1) of this Rule for providing false records for an inventory audit; or~~
  - (vi) ~~failure to purchase infant formula, exempt infant formula, and WIC eligible medical food from an authorized supplier as required by Subparagraphs (b)(3) and (c)(40) of this Rule.~~

(3) ~~For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in~~

~~Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.~~

~~(i) For investigations pursuant to this Section, a single investigation is:~~

~~(1) Compliance buy(s) conducted by undercover investigators within a 12 month period to detect the following violations:~~

~~(A) buying or selling food instruments or cash value vouchers for cash (trafficking);~~

~~(B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers;~~

~~(C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash value vouchers;~~

~~(D) vendor overcharging;~~

~~(E) receiving, transacting, or redeeming food instruments or cash value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;~~

~~(F) charging for supplemental food not received by the WIC customer;~~

~~(G) providing credit or non food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash value vouchers;~~

~~(H) providing unauthorized food items in exchange for food instruments or cash value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;~~

~~(I) failure to properly transact a WIC food instrument or cash value voucher;~~

~~(J) requiring a cash purchase to transact a WIC food instrument or cash value voucher; or~~

~~(K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.~~

~~(2) Monitoring reviews of a vendor conducted by WIC staff within a 12 month period which detect the following violations:~~

~~(A) failure to stock minimum inventory;~~

~~(B) stocking WIC supplemental food outside of the manufacturer's expiration date;~~

~~(C) failure to allow monitoring of a store by WIC staff when required;~~

~~(D) failure to provide WIC food instruments or cash value vouchers for review when requested;~~

~~(E) failure to provide store inventory records when requested by WIC staff;~~

- ~~(F) — failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case;~~
  - ~~(G) — failure of a predominantly WIC vendor to comply with Subparagraph (c)(38) of this Rule regarding incentive items and services; or~~
  - ~~(H) — unauthorized use of the "WIC" acronym or the logo.~~
- ~~(3) — Any other method used by the state or local agency to detect the following violations by a vendor within a 12 month period:~~
- ~~(A) — failure to attend annual vendor training;~~
  - ~~(B) — failure to submit a WIC Price List as required by Subparagraph (c)(31) of this Rule;~~
  - ~~(C) — discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps);~~
  - ~~(D) — contacting a WIC customer in an attempt to recoup funds for food instruments or cash value vouchers or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash value vouchers;~~
  - ~~(E) — nonpayment of a claim assessed by the state agency;~~
  - ~~(F) — providing false information on vendor records (application, vendor agreement, price list, WIC food instruments, cash value vouchers or monitoring forms);~~
  - ~~(G) — claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(30) of this Rule for an inventory audit; or~~
  - ~~(H) — failure to purchase infant formula, exempt infant formula or WIC eligible medical foods from an authorized supplier.~~
- ~~(j) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.~~
- ~~(k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.~~
- ~~(l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:~~
- ~~(1) — The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six month period ending with the month immediately preceding the month during which the notice of administrative action is dated.~~

- ~~(2) The state agency may also impose civil money penalties in accordance with G.S. 130A 22(c1) in lieu of disqualification of a vendor for the state established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (1)(3) of this Rule.~~
- ~~(3) In determining whether to disqualify a WIC vendor for the state established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:~~
- ~~(A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A 2, and another WIC vendor is located within seven miles of the noncomplying vendor;~~
- ~~(B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A 2, and another WIC vendor is located within three miles of the noncomplying vendor; or~~
- ~~(C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash value vouchers.~~
- ~~(4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.~~
- ~~(m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.~~
- ~~(n) The provision in 42 USC 1786 (f)(26) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.~~
- ~~(o) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(32) of this Rule.~~
- ~~(p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.~~
- ~~(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one time payment to a non-authorized store for WIC food instruments or cash value vouchers accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash value vouchers accepted thereafter.~~

~~(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.~~

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. July 1, 1981;  
Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990;  
Temporary Amendment Eff. June 23, 2000; May 17, 2000;  
Amended Eff. April 1, 2001;  
Temporary Amendment Eff. September 1, 2002; July 1, 2002;  
Amended Eff. November 1, 2005; August 1, 2004;  
Temporary Amendment Eff. July 1, 2006;  
Amended Eff. January 1, 2013; October 1, 2009; February 1, 2008; April 1, 2007.*

10A NCAC 43D.0707 is proposed for adoption as follows:

**10A NCAC 43D.0707 VENDOR APPLICANTS**

To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) A vendor applicant shall accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant shall submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List.
- (2) A vendor applicant, at the time of application and throughout the term of authorization, shall submit all completed forms to the local WIC agency, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store.
- (3) A vendor applicant shall purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
  - (a) the sources specified in 42 USC 1786(h)(8)(A)(ix), which is incorporated by reference with all subsequent amendments and editions;
  - (b) Retail food stores that purchase directly from the sources referenced in Sub-item (3)(a) of this Item; or

(c) A source on another state's list of approved infant formula sources as verified by that state's agency.

A vendor applicant shall make available to the state or local WIC agency invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical foods. Receipts and invoices must satisfy the requirements of Sub-items (30)(a) through (30)(c) of Rule .0708. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for failure to purchase infant formula, exempt infant formula, or WIC-eligible medical food from the sources specified in this Item. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for providing infant formula, exempt infant formula, or WIC eligible medical food to WIC customers that was not purchased from the sources specified in this Item.

(4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Sub-item (4)(b) of this Item. The maximum price for each supplemental food shall be established as follows:

(a) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which must be submitted by all vendors by April 1 and October 1 each year in accordance with Item (32) of Rule .0708. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year.

(b) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Item (4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization.

- (5) A vendor applicant shall pass a monitoring review by the local WIC agency to determine whether the store has minimum inventory of supplemental foods as specified in Item (24) of Rule .0708. A vendor applicant that fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the application shall be denied in writing and the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application.
- (6) A vendor applicant shall attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC agency prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements.
- (7) An applicant shall mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case at all times.
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer.
- (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.
- (10) The store shall not use the acronym "WIC" or the WIC logo, including close facsimiles, in total or in part, in the official name in which the business is registered or in the name under which it does business.
- (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency. A vendor applicant shall not be authorized if within the last year the vendor applicant had a previous WIC Vendor Agreement terminated for submitting false, erroneous, or misleading information.
- (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments or cash-value vouchers who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business.
- (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Item, "convicted" or "conviction" means and includes a plea of guilty, a verdict or

finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Item is the same as a conviction for purposes of this Item.

(14) A vendor applicant shall not be authorized if it is currently disqualified from the Supplemental Nutrition Assistance Program ("SNAP") or it has been assessed a SNAP civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired.

(15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:

(a) a SNAP vendor which is disqualified from participation in the SNAP or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or

(b) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed a monetary or civil money penalty pursuant to G.S. 130A-22(c1), Paragraph (e) or Paragraph (f) of Rule .0710 as the result of violation of Paragraphs (a) or (b) of Rule .0710, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

The requirements of this Item shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Item shall not be met even if such transfer or conveyance of financial interest in a SNAP vendor under Sub-item (15)(a) of this Item prematurely ends the disqualification period applicable to that SNAP vendor. The requirements of this Item shall apply until the time the SNAP vendor disqualification otherwise would have expired.

(16) A vendor applicant, excluding free-standing pharmacies, must have SNAP authorization for the store as a prerequisite for WIC vendor authorization and must provide its SNAP authorization number to the state agency.

(17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired. A vendor applicant shall not be authorized as a WIC vendor if any of the vendor applicant's owner(s), officer(s) or manager(s) currently has or previously had a financial interest in a WIC vendor that was assessed a claim by the WIC Program and the claim has not been paid in full.

(18) For a food retailer or free-standing pharmacy to participate in the WIC Program, a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.

(19) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

*History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. January 1, 2013.*

10A NCAC 43D.0708 is proposed for adoption as follows:

**10A NCAC 43D.0708 AUTHORIZED VENDORS**

By signing the WIC Vendor Agreement, the vendor agrees to:

- (1) Process WIC program food instruments and cash-value vouchers in accordance with the terms of the Vendor Agreement and state and federal WIC program rules, regulations and applicable law;
- (2) Accept WIC program food instruments and cash-value vouchers in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
- (3) Provide only the authorized supplemental foods listed on the food instrument, or authorized fruits and vegetables with a cash-value voucher, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument or cash-value voucher prior to obtaining the signature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument or the full dollar value of the cash-value voucher. However, a WIC customer may obtain more fruits and vegetables than the full dollar value of a cash-value voucher if the WIC customer pays the difference;
- (4) Enter in the "Pay Exactly" box on the food instrument or cash-value voucher only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Sub-item (4)(a) of Rule .0707, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument;
- (7) Accept payment from the state WIC Program only up to the full dollar value of the cash-value voucher;
- (8) Not charge the state WIC Program more than the maximum price set by the state agency under Item (4)(a) of Rule .0707 for each supplemental food within the vendor's peer group;
- (9) Provide to WIC customers infant formula, exempt infant formula, and WIC eligible medical food purchased only from the sources specified in Item (3) of Rule .0707. Providing infant formula,

exempt infant formula, or WIC eligible medical food that has not been purchased from the sources specified in Item (3) of Rule .0707 shall result in termination of the WIC Vendor Agreement;

- (10) For free-standing pharmacies, provide only exempt infant formula and WIC-eligible medical foods;
- (11) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (12) Accept WIC program food instruments and cash-value vouchers only on or between the "Issue Date" and the "Participant Must Use By" dates;
- (13) Prior to obtaining the WIC customer's signature, enter in the "Date Transacted" box the month, day and year the WIC food instrument or cash-value voucher is exchanged for supplemental food;
- (14) Ensure that the WIC customer signs the food instrument or cash-value voucher in the presence of the cashier;
- (15) Refuse to transact any food instrument or cash-value voucher that has been altered;
- (16) Not transact food instruments or cash-value vouchers in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (17) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments or cash-value vouchers, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (18) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument or cash-value voucher to enable the vendor number to be read during the Program editing process;
- (19) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- (20) Deposit WIC program food instruments and cash-value vouchers in the vendor's bank. All North Carolina WIC program food instruments and cash-value vouchers must be deposited in the vendor's bank within 60 days of the "Issue Date" on the food instrument or cash-value voucher;
- (21) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by the Agreement and be responsible for the unauthorized use of the authorized WIC vendor stamp;
- (22) Maintain storage of the authorized WIC vendor stamp so only the staff designated by the vendor owner or manager have access to the stamp and report loss of this stamp within two business days to the local WIC agency;

- (23) Notify the local WIC agency of misuse (attempted or actual) of WIC program food instruments or cash-value vouchers;
- (24) Maintain a minimum inventory of supplemental foods in the store for purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Item (1) of Rule .0706, vendors in Peer Groups I through IV of Item (2) of Rule .0706 and vendors in Peer Group IV of Item (3) of Rule .0706:

<u>Food Item</u>	<u>Type of Inventory</u>	<u>Quantities Required</u>
<u>Milk</u>	<u>Whole fluid: gallon</u> <u>-and-</u> <u>Skim/lowfat fluid: gallon</u>	<u>2 gallons</u> <u>4 gallons</u>
<u>Cheese</u>	<u>1 pound package</u>	<u>2 pounds</u>
<u>Cereals</u>	<u>2 types: whole grain</u> <u>(minimum package size 12 ounce)</u>	<u>6 packages total</u>
<u>Eggs</u>	<u>Grade A, large, white:</u> <u>one dozen size carton</u>	<u>2 dozen</u>
<u>Juices</u>	<u>Single strength:</u> <u>48 ounce container</u> <u>64 ounce container</u>	<u>4 containers</u> <u>4 containers</u>
<u>Dried Peas and Beans</u>	<u>one pound package</u>	<u>2 packages</u>
<u>Peanut Butter</u>	<u>16 to 18 ounce container</u>	<u>2 containers</u>
<u>Infant Cereal</u>	<u>8 ounce box</u>	<u>6 boxes</u>
<u>Infant Formula</u>	<u>milk-based concentrate; 13 ounce</u> <u>-and-</u> <u>soy-based concentrate; 13 ounce</u> <u>-and-</u> <u>milk-based powder; 11.0 to 14.0 ounce</u> <u>-and-</u> <u>soy-based powder; 11.0 to 14.0 ounce</u> <u>Brands must be the primary contract infant formulas</u>	<u>34 cans</u> <u>17 cans</u> <u>10 cans</u> <u>5 cans</u>
<u>Fruits</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>
<u>Vegetables</u> <u>(Excludes foods in</u> <u>Dried Peas and Beans</u> <u>category)</u>	<u>14 to 16 ounce can: 2 varieties</u>	<u>6 cans total</u>

All vendors in Peer Groups I through III of Item (1) of Rule .0706, Peer Groups I through IV of Item (2) of Rule .0706 and Peer Groups IV and V of Item (3) of Rule .0706 shall supply milk, soy-

based or lactose-free infant formula in 32 ounce ready-to-feed or lactose-free powder within 48 hours of request by the state or local WIC agency;

- (25) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (26) Permit the purchase of supplemental food without requiring other purchases;
- (27) Attend, or cause a manager or other authorized store representative to attend, annual vendor training upon notification by the local WIC agency. Failure to attend annual vendor training by September 30 of each year shall result in termination of the WIC Vendor Agreement;
- (28) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (29) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (30) Allow monitoring and inspection of the store premises and procedures to ensure compliance with the Agreement and state and federal WIC Program rules, regulations and applicable law. This includes providing access to all Program-related records, including access to all WIC food instruments and cash-value vouchers at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, receipts, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Notwithstanding any other provision of this Rule and Rules .0707 and .0710, failure or inability to provide these records for an inventory audit or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Subparagraph (a)(1) of Rule .0710. Invoices, receipts, purchase orders, and any other proofs of purchase for WIC supplemental foods shall include:
- (a) the name of the seller and be prepared entirely by the seller or on the seller's business letterhead;
  - (b) the date of purchase and the date the authorized vendor received the WIC supplemental food at the store if different from the date of purchase; and
  - (c) a description of each WIC supplemental food item purchased, including brand name, unit size, type or form, and quantity;
- (31) Maintain a record of all SNAP-eligible food sales and provide to the State agency upon request a statement of the total amount of revenue derived from SNAP-eligible food sales and written documentation to support the amount of sales claimed by the vendor, such as sales records, financial statements, reports, tax documents or other verifiable documentation;
- (32) Submit a current accurately completed WIC Price List when signing this Agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency;

- (33) Reimburse the state agency in full or agree to a repayment schedule with the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the WIC vendor stamp. Failure to reimburse the state agency in full or agree to a repayment schedule within 30 days of written notification of a claim shall result in termination of the WIC Vendor Agreement. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument or cash-value voucher invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under Rule .0710 for the vendor violation(s);
- (34) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments or cash-value vouchers not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments or cash-value vouchers;
- (35) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (36) Notify the local WIC agency in writing at least 30 days prior to a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (37) Return the authorized WIC vendor stamp to the local WIC agency upon termination of the Agreement or disqualification from the WIC Program;
- (38) Not discriminate on the basis of WIC participation, such as failing to offer WIC customers the same courtesies offered to other customers or requiring separate WIC lines;
- (39) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant is subject to the vendor peer group criteria of Rule .0706 and the vendor selection criteria of Rule .0707; and
- (40) Comply with all the requirements for vendor applicants of Items (3), (4) and (7) though (16) of Rule .0707 throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Items (3), (4), (8), (9), (10), (11), (12), (13) or (15) of Rule .0707 during the vendor's period

of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Items (7), (14) or (16) of Rule .0707 during the vendor's period of authorization.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. January 1, 2013.

10A NCAC 43D.0709 is proposed for adoption as follows:

**10A NCAC 43D .0709    LOCAL WIC AGENCY**

By signing the WIC Vendor Agreement, the local WIC agency agrees to the following:

- (1) Provide annual vendor training on WIC procedures and rules;
- (2) Monitor the vendor's performance under the Agreement to ensure compliance with the Agreement and state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a fiscal year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement; and
- (4) Assist the vendor with questions which may arise under the Agreement or through the vendor's participation in the WIC Program.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. January 1, 2013.

10A NCAC 43D.0710 is proposed for adoption as follows:

**10A NCAC 43D.0710    VENDOR VIOLATIONS AND SANCTIONS**

(a) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions. In accordance with 7 C.F.R. 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified. A pattern, as referenced in 7 CFR 246.12 (l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv)(A), shall be established as follows:

- (1) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days

within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records required under Item (30) of Rule .0708 for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and this Subparagraph;

- (2) two occurrences of vendor overcharging within a 12-month period;
- (3) two occurrences of receiving, transacting or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (4) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (5) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers within a 12-month period; or
- (6) three occurrences of providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

(b) Title 7 C.F.R. 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the number of occurrences and sanctions set forth below. If during the course of a single investigation the state agency determines that a vendor has committed multiple state-established violations, the disqualification periods shall be cumulative, provided that the total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (c) of this Rule:

- (1) One year for two occurrences within a 12-month period of discrimination on the basis of WIC participation as referenced in Item (38) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (2) One year for three occurrences within a 12-month period of failure to properly transact a WIC food instrument or cash-value voucher by not completing the date and purchase price on the WIC food instrument or cash-value voucher before obtaining the WIC customer's signature, by not obtaining the WIC customer's signature in the presence of the cashier, or by accepting a WIC food instrument or cash-value voucher prior to the "Issue Date" or after the "Participant Must Use By" dates on the food instrument or cash-value voucher. Except as provided in 7 C.F.R. 246.12(l)(3)(iv), each improperly transacted food instrument or cash-value voucher is a separate occurrence;
- (3) One year for three occurrences within a 12-month period of requiring a cash purchase to transact a WIC food instrument or cash-value voucher. Except as provided in 7 C.F.R. 246.12(l)(3)(iv),

each transacted food instrument or cash-value voucher requiring a cash purchase is a separate occurrence;

- (4) 270 days for three occurrences within a 12-month period of contacting a WIC customer in an attempt to recoup funds for a food instrument or cash-value voucher or contacting a WIC customer outside the store regarding the transaction or redemption of a WIC food instrument or cash-value voucher. Each contact with any WIC customer is a separate occurrence, whether each contact is with the same or different WIC customers;
- (5) 180 days for three occurrences within a 12-month period of failure to provide Program-related records referenced in Item (30) of Rule .0708 when requested by WIC staff, except as provided in Item (30) of Rule .0708 and Subparagraph (a)(1) of this Rule for failure or inability to provide records for an inventory audit. Each request for records is a separate occurrence, whether each request is for the same or different records;
- (6) 180 days for three occurrences within a 12-month period of failure to provide the information referenced in Item (31) of Rule .0708 when requested by WIC staff. Each request for information is a separate occurrence, whether each request is for the same or different information;
- (7) 180 days for three occurrences within a 12-month period of failure to stock the minimum inventory specified in Item (24) of Rule .0708. Each date this violation is detected is a separate occurrence;
- (8) 90 days for three occurrences within a 12-month period of stocking WIC supplemental foods outside of the manufacturer's expiration date. Each date this violation is detected is a separate occurrence;
- (9) 90 days for three occurrences within a 12-month period of failure to allow monitoring of a store by WIC staff. Each attempt to monitor the store is a separate occurrence;
- (10) 90 days for five occurrences within a 12-month period of failure to submit a WIC Price List as required by Item (32) of Rule .0708. Each written request by the state or local WIC agency for submission of a WIC Price List is a separate occurrence, whether each request is for the same or different WIC Price Lists;
- (11) 60 days for three occurrences within a 12-month period of failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case. Each date this violation is detected is a separate occurrence; and
- (12) 60 days for five occurrences within a 12-month period of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available. Except as provided in 7 C.F.R. 246.12(1)(3)(iv), each transacted food instrument or cash-value voucher requiring the purchase of a specific brand when more than one WIC supplemental food brand is available is a separate occurrence.

(c) For investigations pursuant to this Section, a single investigation is:

- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
- (A) buying or selling food instruments or cash-value vouchers for cash (trafficking);
  - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
  - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments or cash-value vouchers;
  - (D) vendor overcharging;
  - (E) receiving, transacting, or redeeming food instruments or cash-value vouchers outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
  - (F) charging for supplemental food not received by the WIC customer;
  - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments or cash-value vouchers;
  - (H) providing unauthorized food items in exchange for food instruments or cash-value vouchers, including charging for supplemental food provided in excess of those listed on the food instrument;
  - (I) failure to properly transact a WIC food instrument or cash-value voucher;
  - (J) requiring a cash purchase to transact a WIC food instrument or cash-value voucher; or
  - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available.
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
- (A) failure to stock the minimum inventory specified in Item (24) of Rule .0708;
  - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
  - (C) failure to allow monitoring of a store by WIC staff;
  - (D) failure to provide Program-related records referenced in Item (30) of Rule .0708 when requested by WIC staff;
  - (E) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
  - (F) unauthorized use of the "WIC" acronym or the logo.
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
  - (B) failure to submit a WIC Price List as required by Item (32) of Rule .0708;
  - (C) discrimination on the basis of WIC participation as referenced in Item (38) of Rule .0708.

- (D) contacting a WIC customer in an attempt to recoup funds for food instruments or cash-value vouchers or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments or cash-value vouchers;
- (E) nonpayment of a claim assessed by the state agency;
- (F) providing false, erroneous, or misleading information to the state or local WIC agency;
- (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Item (30) of Rule .0708 for an inventory audit;
- (H) failure to purchase infant formula, exempt infant formula or WIC-eligible medical foods from the sources specified in Item (3) of Rule .0707; or
- (I) providing WIC customers infant formula, exempt infant formula, or WIC eligible medical food that was not purchased from the sources specified in Item (3) of Rule .0707.

(d) The SNAP disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(e) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (f)(3)(A), (f)(3)(B) or (f)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Parts. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

(f) The following provisions apply to monetary and civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The state agency may also impose monetary penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (b) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (f)(3) of this Paragraph.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (b) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:

- (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
- (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
- (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments or cash-value vouchers.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions. These provisions also apply to a vendor that fails to pay a monetary penalty imposed under G.S. 130A-22(c1).
- (g) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
- (h) The provisions of 42 USC 1786 (f)(26) and 7 CFR 246.12(l)(3) regarding vendor notification of violations are incorporated by reference with all subsequent amendments and editions.
- (i) The state agency may offset payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Item (33) of Rule .0708.
- (j) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal or state law.
- (k) Notwithstanding other provisions of this Rule and Rules .0707 and .0708, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments or cash-value vouchers accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument or as allowed with the cash-value voucher, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instruments or cash-value vouchers. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments or cash-value vouchers accepted thereafter.
- (l) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

*History Note:* Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;  
Eff. January 1, 2013.